

IC 32-24

ARTICLE 24. EMINENT DOMAIN

IC 32-24-1

Chapter 1. General Procedures

IC 32-24-1-1

"Condemnor" defined

Sec. 1. As used in section 5 of this chapter, "condemnor" means any person authorized by Indiana law to exercise the power of eminent domain.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-2

"Owner" defined

Sec. 2. As used in section 5 of this chapter, "owner" means the persons listed on the tax assessment rolls as being responsible for the payment of real estate taxes imposed on the property and the persons in whose name title to real estate is shown in the records of the recorder of the county in which the real estate is located.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-3

Entry on land; purchase before instituting proceedings; surveys by public utilities or pipeline companies

Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Except as provided in subsection (g), before proceeding to condemn, the person:

- (1) may enter upon any land to examine and survey the property sought to be acquired; and
- (2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

- (1) Establishing a proposed purchase price for the property.
- (2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.
- (3) Conducting good faith negotiations with the owner of the property.

(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the

guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired.

(g) This subsection applies to a public utility (as defined in IC 32-24-1-5.9(a)) or a pipeline company (as defined in IC 8-1-22.6-7). If a public utility or a pipeline company seeks to acquire land or an interest in land under this article, the public utility or pipeline company may not enter upon the land to examine or survey the property sought to be acquired unless either of the following occur:

(1) The public utility or the pipeline company sends notice by certified mail to the affected landowner (as defined in IC 8-1-22.6-2) of the public utility's or the pipeline company's intention to enter upon the landowner's property for survey purposes. The notice required by this subdivision must be mailed not later than fourteen (14) days before the date of the public utility's or the pipeline company's proposed examination or survey.

(2) The public utility or the pipeline company receives the landowner's signed consent to enter the property to perform the proposed examination or survey.

An affected landowner may bring an action to enforce this subsection in the circuit court of the county in which the landowner's property is located. A prevailing landowner is entitled to the landowner's actual damages as a result of the public utility's or the pipeline company's violation. In addition, the court may award a prevailing landowner reasonable costs of the action and attorney's fees.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.5; P.L.110-2007, SEC.2.

IC 32-24-1-4

Complaint

Sec. 4. (a) If the person seeking to acquire the property does not agree with the owner of an interest in the property or with the guardian of an owner concerning the damages sustained by the owner, the person seeking to acquire the property may file a complaint for that purpose with the clerk of the circuit court of the county where the property is located.

(b) The complaint must state the following:

(1) The name of the person seeking to acquire the property. This person shall be named as the plaintiff.

(2) The names of all owners, claimants to, and holders of liens on the property, if known, or a statement that they are unknown.

These owners, claimants, and holders of liens shall be named as

defendants.

(3) The use the plaintiff intends to make of the property or right sought to be acquired.

(4) If a right-of-way is sought, the location, general route, width, and the beginning and end points of the right-of-way.

(5) A specific description of each piece of property sought to be acquired and whether the property includes the whole or only part of the entire parcel or tract. If property is sought to be acquired by the state or by a county for a public highway or by a municipal corporation for a public use and the acquisition confers benefits on any other property of the owner, a specific description of each piece of property to which the plaintiff alleges the benefits will accrue. Plats of property alleged to be affected may accompany the descriptions.

(6) That the plaintiff has been unable to agree for the purchase of the property with the owner, owners, or guardians, as the case may be, or that the owner is mentally incompetent or less than eighteen (18) years of age and has no legally appointed guardian, or is a nonresident of Indiana.

(c) All parcels lying in the county and required for the same public use, whether owned by the same parties or not, may be included in the same or separate proceedings at the option of the plaintiff. However, the court may consolidate or separate the proceedings to suit the convenience of parties and the ends of justice. The filing of the complaint and a lis pendens notice in any eminent domain action under this article constitutes notice of proceedings to all subsequent purchasers and persons taking encumbrances of the property, who are bound by the notice.

As added by P.L.2-2002, SEC.9. Amended by P.L.81-2004, SEC.26.

IC 32-24-1-5

Offer of purchase; notice; service; forms; restoration of utility or transportation services

Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

- (1) the owner of the property sought to be acquired; or
- (2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

NOTICE

TO: _____, _____ (owner(s)),
_____ (condemnor) needs your property
for a _____
(description of project), and will need to acquire the following from
you:

_____ (general
description of the property to be acquired). We have made you a
formal offer for this property that is now on file in the Clerk's Office
in the _____ County Court House. Please pick up the offer. If you
do not respond to this notice or accept the offer by _____ (a date 30
days from 1st date of publication) 20____, we shall file a suit to
condemn the property.

Condemnor

The condemnor must file the offer with the clerk of the circuit court
with a supporting affidavit that diligent search has been made and
that the owner cannot be found. The notice shall be published twice
as follows:

- (1) One (1) notice immediately.
- (2) A subsequent publication at least seven (7) days and not more
than twenty-one (21) days after the publication under subdivision
(1).
- (c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT
ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain
your property or an easement across your property for certain public
purposes. _____ (condemnor) needs (your property) (an
easement across your property) for a
_____ (brief description of the project)
and needs to take _____ (legal description of the
property or easement to be taken; the legal description may be made
on a separate sheet and attached to this document if additional space
is required)

It is our opinion that the fair market value of the (property)
(easement) we want to acquire from you is \$ _____, and, therefore,
_____ (condemnor) offers you \$ _____ for the above
described (property) (easement). You have thirty (30) days from this
date to accept or reject this offer. If you accept this offer, you may
expect payment in full within ninety (90) days after signing the
documents accepting this offer and executing the easement, and
provided there are no difficulties in clearing liens or other problems
with title to land. Possession will be required thirty (30) days after
you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND
LEGALLY PROTECTED RIGHTS:

1. By law, _____ (condemnor) is required to make a
good faith effort to purchase (your property) (an easement across
your property).

2. You do not have to accept this offer and _____ (condemnor) is not required to agree to your demands.
3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit to condemn and acquire the (property) (easement) in the county in which the property is located.
4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.
5. You may object to the public purpose and necessity of this project.
6. If _____ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.
7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.
8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.
9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).
10. If you have any questions concerning this matter you may contact us at:

(full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

_____ of _____,
_____ of _____,
_____ of _____,
_____ of _____,

on the _____ day of _____, 20____,

BY:

(signature)

(printed name and title)

Agent of:

(condemnor)

If you decide to accept the offer of \$ _____ made by
_____ (condemnor) sign your name below and mail
this form to the address indicated above. An additional copy of
this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____,
owner(s) of the above described property or interest in property,
hereby accept the offer of \$ _____ made by _____
(condemnor) on this _____ day of _____, 20____.

NOTARY'S CERTIFICATE

STATE OF _____)

)SS:

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of
_____, 20____.

My Commission Expires: _____

(Signature)

(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.6.

IC 32-24-1-5.5

Time limit for filing a complaint

Sec. 5.5. (a) Except as provided in sections 5.8 and 5.9 of this chapter, this section applies to every person that may exercise the power of eminent domain.

(b) If:

(1) a person that may exercise the power of eminent domain submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than two (2) years after the date the person submitted the written acquisition offer to the owner.

(c) If a person that may exercise the power of eminent domain fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least three (3) years after the date the two (2) year period described in subsection (b) expires.

As added by P.L.163-2006, SEC.7.

IC 32-24-1-5.8

Time limit for filing a complaint; Indiana department of transportation projects

Sec. 5.8. (a) This section applies only to:

(1) the Indiana department of transportation when the department seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a:

(A) state highway; or

(B) toll road project or toll bridge; and

(2) any other person that may exercise the power of eminent domain when the person seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a feeder road for an Indiana department of transportation project described in subdivision (1) if the construction, reconstruction, improvement, maintenance, or repair of the feeder road begins not later than five (5) years from the conclusion of the project.

(b) If:

(1) the Indiana department of transportation or other person described in subsection (a)(2) submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the department or other person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than

three (3) years after the date the department or other person submitted the written acquisition offer to the owner.

(c) If the Indiana department of transportation or other person fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the department or other person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same or a substantially similar project for at least three (3) years after the date the three (3) year period described in subsection (b) expires.

(d) A court shall expedite the hearing of an action initiated under subsection (b). A party to the action is entitled to an expedited appeal of the court's final determination, under rules to be adopted by the supreme court.

As added by P.L.163-2006, SEC.8. Amended by P.L.11-2014, SEC.1.

IC 32-24-1-5.9

Time limit for filing a complaint; public utilities and pipeline companies

Sec. 5.9. (a) As used in this section, "public utility" means a public utility, municipally owned utility, cooperatively owned utility, joint agency created under IC 8-1-2.2, municipal sanitation department operating under IC 36-9-23, sanitary district operating under IC 36-9-25, or an agency operating as a stormwater utility.

(b) This section applies only to a public utility or pipeline company.

(c) If:

(1) a public utility or pipeline company submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer in writing;

the public utility or pipeline company, to acquire the parcel by the exercise of eminent domain, must file a complaint under this article not more than six (6) years after the date on which the public utility or pipeline company submitted the written acquisition offer to the owner.

(d) If a public utility or pipeline company fails to meet the requirements set forth in subsection (c) concerning a parcel of real estate, the public utility or pipeline company may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least two (2) years after the date on which the six (6) year period described in subsection (c) expires.

As added by P.L.163-2006, SEC.9.

IC 32-24-1-6

Notice to appear in court; form

Sec. 6. (a) Upon the filing of a complaint under this chapter, the circuit court clerk shall issue a notice requiring the defendants to appear before the court on the day to be fixed by the plaintiff by

indorsement on the complaint at the time of filing the complaint, and to show cause, if any, why the property sought to be condemned should not be acquired. The notice shall be substantially in the following form:

In the _____ Court of Indiana.
To the Sheriff of _____ County, Indiana:

You are hereby commanded to notify _____, defendants, to appear before the _____ Court of _____ County, Indiana on the _____ day of _____, 20_____, at _____ o'clock, __ M. to show cause, if any, they have why the property sought to be acquired in the complaint of _____ should not be acquired.

Witness my hand and the seal of the court affixed at _____, Indiana, this _____ day of _____, 20_____.
Clerk of _____ Court.

(b) The notice shall be served in the same manner as a summons is served in civil actions. Upon a showing by affidavit that any defendant is a nonresident of Indiana or that the defendant's name or residence is unknown, publication and proof of the notice may be made as provided in section 7 of this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-7

Notice to appear in court; publication; nonresident landowners; assessment of damages

Sec. 7. (a) The notice, upon its return, must show its:

- (1) service for ten (10) days; or
- (2) proof of publication for three (3) successive weeks in a weekly newspaper of general circulation printed and published in the English language in the county in which the property sought to be acquired is located.

The last publication of the notice must be five (5) days before the day set for the hearing.

(b) The clerk of the court in which the proceedings are pending, upon the first publication of the notice, shall send to the post office address of each nonresident owner whose property will be affected by the proceedings a copy of the notice, if the post office address of the owner or owners can be ascertained by inquiry at the office of the treasurer of the county.

(c) The court, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint:

- (1) one (1) disinterested freeholder of the county; and
- (2) two (2) disinterested appraisers licensed under IC 25-34.1; who are residents of Indiana to assess the damages, or the benefits and damages, as the case may be, that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property.

As added by P.L.2-2002, SEC.9. Amended by P.L.113-2006, SEC.19.

IC 32-24-1-8

Objections to proceedings; appeals

Sec. 8. (a) A defendant may object to the proceedings:

- (1) because the court does not have jurisdiction either of the subject matter or of the person;
- (2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or
- (3) for any other reason disclosed in the complaint or set up in the objections.

(b) Objections under subsection (a) must be:

- (1) in writing;
- (2) separately stated and numbered; and
- (3) filed not later than thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions upon filing with the circuit court clerk a bond:

- (1) with the penalty that the court fixes;
- (2) with sufficient surety;
- (3) payable to the plaintiff; and
- (4) conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.

The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the filing of the appeal bond. The appeal does not stay proceedings in the cause.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.10.

IC 32-24-1-9

Appraisers; oath and duty

Sec. 9. (a) Each appraiser shall take an oath that:

- (1) the appraiser has no interest in the matter; and
- (2) the appraiser will honestly and impartially make the assessment.

(b) After the appraisers are sworn as provided in subsection (a), the judge shall instruct the appraisers as to:

- (1) their duties as appraisers; and
- (2) the measure of the damages and benefits, if any, they allow.

(c) The appraisers shall determine and report all of the following:

- (1) The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the property.
- (2) The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.
- (3) The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.
- (4) The other damages, if any, that will result to any persons from the construction of the improvements in the manner proposed by the plaintiff.

(d) If the property is sought to be acquired by the state or by a county for a public highway or a municipal corporation for a public use that confers benefits on any property of the owner, the report must also state the benefits that will accrue to each parcel of property, set opposite the description of each parcel of property whether described in the complaint or not.

(e) Except as provided in subsection (f), in estimating the damages specified in subsection (c), the appraisers may not deduct for any benefits that may result from the improvement.

(f) In the case of a condemnation by the state or by a county for a public highway or a municipal corporation for public use, the appraisers shall deduct any benefits assessed from the amount of damage allowed, if any, under subsection (c)(3) and (c)(4) and the difference, if any, plus the damages allowed under subsection (c)(1) and (c)(2) shall be the amount of the award. However, the damages awarded may not be less than the damages allowed under subsection (c)(1) and (c)(2). Upon the trial of exceptions to the award by either party, a like measure of damages must be followed.

(g) For the purpose of assessing compensation and damages, the right to compensation and damages is considered to have accrued as of the date of the service of the notice provided in section 6 of this chapter, and actual value of compensation and damages at that date shall be:

- (1) the measure of compensation for all property to be actually acquired; and
- (2) the basis of damages to property not actually acquired but injuriously affected;

except as to the damages stated in subsection (c)(4).

As added by P.L.2-2002, SEC.9.

IC 32-24-1-10

Payment of benefits or damages assessed

Sec. 10. (a) If the plaintiff pays to the circuit court clerk the amount of damages assessed under section 9 of this chapter, the plaintiff may take possession of and hold the interest in the property so acquired for the uses stated in the complaint, subject to the appeal provided for in section 8 of this chapter. But the amount of the benefits or damages is subject to review as provided in section 11 of this chapter.

(b) Upon payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the property is located a certificate, certifying the amount paid to the circuit court clerk and including the description of the property being acquired. The auditor of the county shall then transfer the property being acquired to the plaintiff on the tax records of the county.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-11

Notice of filing of appraisers' reports; exceptions to reports

Sec. 11. (a) When a report of the appraisers is filed with a court under this chapter, the circuit court clerk shall send written notice of the filing of the report by certified mail to:

- (1) all known parties to the action; and
- (2) the attorneys of record of the parties.

(b) Any party to an action under this chapter aggrieved by the assessment of benefits or damages in a report of the appraisers may file written exceptions to the assessment in the office of the circuit court clerk. Exceptions to the assessment must be filed by a party:

- (1) after the report of the appraisers is filed with the court; and
- (2) not later than forty-five (45) days after the date the circuit court clerk mails the report under subsection (a).

(c) The cause shall further proceed to issue, trial, and judgment as in civil actions. The court may make orders and render findings and judgments that the court considers just. Either party may appeal a judgment as to benefits or damages as in civil actions.

(d) Forty-five (45) days after the date the circuit court clerk mails the report under subsection (a), and if the plaintiff has paid the amount of damages assessed to the circuit court clerk, any one (1) or more of the defendants may file a written request for payment of each defendant's proportionate share of the damages held by the circuit court clerk. The defendants making a request for payment must also file sufficient copies of the request for service upon the plaintiff and all other defendants not joining in the request. The defendants making the request may withdraw and receive each defendant's proportionate share of the damages upon the following terms and conditions:

- (1) Each written request must:
 - (A) be verified under oath; and
 - (B) state:

- (i) the amount of the proportionate share of the damages to which each of the defendants joining in the request is entitled;
 - (ii) the interest of each defendant joining in the request; and
 - (iii) the highest offer made by the plaintiff to each of the defendants for each defendant's respective interests in or damages sustained in respect to the property that has been acquired by the plaintiff.
- (2) Upon the filing of a written request for withdrawal and payment of damages to any of the defendants, the circuit court clerk shall immediately issue a notice to the plaintiff and all defendants of record in the cause who have not joined in the request for payment. The notice must contain the following:
- (A) The names of the parties.
 - (B) The number of the cause.
 - (C) A statement that a request for payment has been filed.
 - (D) A notice to appear on a day, to be fixed by the court, and show cause, if any, why the amounts requested should not be withdrawn and paid over by the circuit court clerk to those defendants requesting the amounts to be paid.
 - (E) A copy of the request for payment.

If a defendant not requesting payment is a nonresident of Indiana, or if that defendant's name or residence is unknown, publication and proof of the notice and request for payment shall be made as provided in section 4 of this chapter.

(3) After a hearing held after notice of a written request made under this section, the court shall determine and order the payment by the circuit court clerk of the proportionate shares of the damages due to the defendants requesting payment. Any of the defendants may appeal an order under this subdivision within the same time and in the same manner as provided for allowable appeals from interlocutory orders in civil actions.

(4) If exceptions to the appraisers' report have been duly filed by the plaintiff or any defendant, the circuit court clerk may not make payment to any defendant of any part of the damages deposited with the clerk by the plaintiff until the defendants requesting payment have filed with the circuit court clerk a written undertaking, with surety approved by the court, for the repayment to the plaintiff of all sums received by those defendants in excess of the amount or amounts awarded as damages to those defendants by the judgment of the court upon trial held on the exceptions to the assessment of damages by the appraisers. However, the court may waive the requirement of separate surety as to any defendant who is a resident freeholder of the county in which the cause is pending and who is owner of real property in Indiana that is liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn exceed the amount offered to the defendants as stated in their

request or the amount determined by the court if the plaintiff has disputed the statement of the offer. A surety or written undertaking may not be required for a defendant to withdraw those amounts previously offered by the plaintiff to the defendant if the plaintiff has previously notified the court in writing of the amounts so offered. The liability of any surety does not exceed the amount by which the damages to be withdrawn exceed the amount offered to the defendants with whom the surety joins in the written undertaking. Each written undertaking filed with the circuit court clerk shall be immediately recorded by the clerk in the order book and entered in the judgment docket, and from the date of the recording and entry the written undertaking is a lien upon all the real property in the county owned by the several obligors, and the undertaking is also a lien upon all the real property owned by the several obligors in each county of Indiana in which the plaintiff causes a certified copy of the judgment docket entry to be recorded, from the date of the recording.

(5) The withdrawal and receipt from the circuit court clerk by any defendant of that defendant's proportionate share of the damages awarded by the appraisers, as determined by the court upon the written request and hearing, does not operate and is not considered as a waiver of any exceptions duly filed by that defendant to the assessment of damages by the appraisers.

(6) In any trial of exceptions, the court or jury shall compute and allow interest at an annual rate of eight percent (8%) on the amount of a defendant's damages from the date plaintiff takes possession of the property. Interest may not be allowed on any money paid by the plaintiff to the circuit court clerk:

- (A) after the money is withdrawn by the defendant; or
- (B) that is equal to the amount of damages previously offered by the plaintiff to any defendant and which amount can be withdrawn by the defendant without filing a written undertaking or surety with the court for the withdrawal of that amount.

As added by P.L.2-2002, SEC.9. Amended by P.L.50-2012, SEC.1.

IC 32-24-1-12

Offer of settlement; acceptance; rejection

Sec. 12. (a) Not later than forty-five (45) days before a trial involving the issue of damages, the plaintiff shall, and a defendant may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 14 of this chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from the defendant.

(e) This section does not apply to an action brought under IC 8-1-13-19 (repealed).

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.11.

IC 32-24-1-13

Highways and roads; appointment of appraisers

Sec. 13. (a) The Indiana department of transportation or any state board, agency, or commission that succeeds the department in respect to the duties to locate, relocate, construct, reconstruct, repair, or maintain the public highways of Indiana, having the right to exercise the power of eminent domain for the public use, in its action for condemnation is not required to prove that an offer of purchase was made to the property owner in an action under this article.

(b) The court shall on the return day fixed at the time of the filing of the complaint appoint appraisers as provided by law and fix a day not later than ten (10) days after the date of the court's order for the appraisers to appear, qualify, and file their report of appraisal.

(c) If the appraisers appointed by the court fail to appear, qualify, and file their report of appraisal as ordered by the court, the court shall discharge the appraisers and appoint new appraisers in the same manner as provided in subsection (b).

As added by P.L.2-2002, SEC.9.

IC 32-24-1-14

Costs of proceedings; litigation expenses

Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses, including reasonable attorney's fees, in an amount not to exceed the lesser of:

(1) twenty-five thousand dollars (\$25,000); or

(2) the fair market value of the defendant's property or easement as determined under this chapter.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.12.

IC 32-24-1-15

Forfeitures; failure to pay damages or take possession

Sec. 15. (a) If the person seeking to take property under this article fails:

(1) to pay the assessed damages and, if applicable, the attorney's fees payable under section 14 of this chapter not later than one (1) year after the appraisers' report is filed, if exceptions are not filed to the report;

(2) to pay:

(A) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter if exceptions are filed to the appraisers' report and the exceptions are not sustained; or

(B) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter and costs if exceptions are filed to the appraisers' report and the exceptions are sustained;

not later than one (1) year after the entry of the judgment, if an appeal is not taken from the judgment;

(3) to pay the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter or the judgment rendered in the trial court not later than one (1) year after final judgment is entered in the appeal if an appeal is taken from the judgment of the trial court; or

(4) to take possession of the property and adapt the property for the purpose for which it was acquired not later than six (6) years after the payment of the award or judgment for damages, except where a fee simple interest in the property is authorized to be acquired and is acquired;

the person seeking to acquire the property forfeits all rights in the property as fully and completely as if the procedure to take the property had not begun.

(b) An action to declare a forfeiture under this section may be brought by any person having an interest in the property sought to be acquired, or the question of the forfeiture may be raised and determined by direct allegation in any subsequent proceedings, by any other person to acquire the property for a public use. In the subsequent proceedings the person seeking the previous acquisition or the person's proper representatives, successors, or assigns shall be made parties.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.13.

IC 32-24-1-16

Prior appropriation of land

Sec. 16. A person having an interest in property that has been or may be acquired for a public use without the procedures of this article or any prior law followed is entitled to have the person's damages assessed under this article substantially in the manner provided in this article.

As added by P.L.2-2002, SEC.9.

IC 32-24-1-17

Conflicting laws; repeal

Sec. 17. All laws and parts of laws in conflict with the provisions of this chapter are hereby repealed: provided, that this repeal shall not affect proceedings pending on April 15, 1905, but such proceedings may be completed as if this chapter had never been passed.

As added by P.L.2-2002, SEC.9.

IC 32-24-2

Chapter 2. Procedures for Cities and Towns

IC 32-24-2-1

"Fiscal officer" defined

Sec. 1. As used in this chapter, "fiscal officer" means:

- (1) the city controller of a consolidated city or second class city;
- (2) the city clerk-treasurer of a third class city; or
- (3) the town clerk-treasurer of a town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-2

"Municipality" defined

Sec. 2. As used in this chapter, "municipality" means a city or town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-3

"Property" defined

Sec. 3. As used in this chapter, "property" refers to real property or personal property.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-4

"Works board" defined

Sec. 4. As used in this chapter, "works board" means:

- (1) the board of public works or the board of public works and safety of a city; or
- (2) the legislative body of a town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-5

Alternate procedure

Sec. 5. If:

- (1) a municipality has the power to acquire property under this chapter; or
- (2) another statute provides for proceedings by a municipality for acquiring property under this chapter;

the board exercising those powers may proceed under IC 32-24-1 instead of this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-6

Application of chapter; condemnation resolutions; notice; remonstrances

Sec. 6. (a) This chapter applies if the works board of a municipality wants to acquire property for the use of the municipality or to open, change, lay out, or vacate a street, an alley, or a public place in the municipality, including a proposed street or alley

crossings of railways or other rights-of-way. However, this chapter does not apply if a municipality wants to acquire the property of a public utility (as defined in IC 8-1-2-1).

(b) The works board must adopt a resolution that the municipality wants to acquire the property. The resolution must describe the property that may be injuriously or beneficially affected. The board shall have notice of the resolution published in a newspaper of general circulation published in the municipality once each week for two (2) consecutive weeks. The notice must name a date, at least ten (10) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

(c) The works board shall consider the remonstrances, if any, and then take final action, confirming, modifying, or rescinding its original resolution. This action is conclusive as to all persons.

As added by P.L.2-2002, SEC.9. Amended by P.L.172-2009, SEC.6.

IC 32-24-2-7

List of affected property owners

Sec. 7. (a) When the final action under section 6 of this chapter is taken, the works board shall have prepared the following:

(1) A list of all the owners or holders of the property, and of interests in it, sought to be acquired or to be injuriously affected.

(2) If a street, alley, or public place is to be opened, laid out, changed, or vacated in the municipality, or within four (4) miles of it, a list of the owners or holders of property, and of interests in it, to be beneficially affected by the work.

(b) The list required by subsection (a) may not be confined to the owners of property along the line of the proposed work but must include all property taken, benefitted, or injuriously affected. In addition to the names, the list must show, with reasonable certainty, a description of each piece of property belonging to those persons that will be acquired or affected, either beneficially or injuriously. A greater certainty in names or descriptions is not necessary for the validity of the list than is required in the assessment of taxes.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-8

Damage awards and benefit assessments; notice; remonstrances

Sec. 8. (a) Upon the completion of the list, the works board shall award the damages sustained and assess the benefits accruing to each piece of property on the list.

(b) When the assessments or awards are completed, the works board shall have a written notice served upon the owner of each piece of property, showing the amount of the assessment or award, by leaving a copy of the notice at the owner's last usual place of residence in the municipality or by delivering a copy to the owner personally.

(c) If the owner is a nonresident, or if the owner's residence is

unknown, the municipality shall notify the owner by publication in a daily newspaper of general circulation in the municipality once each week for three (3) successive weeks.

(d) The notices must also name a day, at least ten (10) days after service of notice or after the last publication, on which the works board will receive or hear remonstrances from persons with regard to the amount of their respective awards or assessments.

(e) Persons not included in the list of the assessments or awards and claiming to be entitled to them are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the works board.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-9

Guardianship proceedings; notice

Sec. 9. (a) If a person having an interest in property affected by the proceedings is mentally incompetent or less than eighteen (18) years of age, the works board shall certify that fact to the municipality's attorney.

(b) The municipality's attorney shall apply to the proper court and secure the appointment of a guardian for the person less than eighteen (18) years of age or the mentally incompetent person. The works board shall give notice to the guardian, who shall appear and defend the interest of the protected person. However, if the protected person already has a guardian, the notice shall be served on that guardian. The requirements of notice to the guardian are the same as for other notices.

(c) If there is a defect in the proceedings with respect to at least one (1) interested person, the defect does not affect the proceedings except as it may concern the interest or property of those persons, and the defect does not affect any other person concerned.

(d) In case of a defect, supplementary proceedings of the same general character as those prescribed by this chapter may be initiated in order to correct the defect.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-10

Remonstrances; appeal

Sec. 10. (a) A person notified or considered to be notified under this chapter may appear before the works board on the day fixed for hearing remonstrances to awards and assessments and remonstrate in writing against them.

(b) After the remonstrances have been received, the works board shall either sustain or modify the awards or assessments in the case of remonstrances that have been filed. The works board shall sustain the award or assessment in the case of an award or assessment against which a remonstrance has not been filed.

(c) A person remonstrating in writing who is aggrieved by the decision of the works board may, not later than twenty (20) days after

the decision is made, take an appeal to a court that has jurisdiction in the county in which the municipality is located. The appeal affects only the assessment or award of the person appealing.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-11

Appeal procedure; discontinuance

Sec. 11. (a) The appeal may be taken by filing an original complaint in the court against the municipality within the time required by section 10(c) of this chapter, setting forth the action of the works board with respect to the assessment and stating the facts relied upon as showing an error on the part of the board. The court shall rehear the matter of the assessment de novo and confirm, reduce, or increase the assessment. If the court reduces the amount of benefit assessed or increases the amount of damages awarded, the plaintiff may recover costs. If the court confirms the amount of the assessment, the plaintiff may not recover costs. The judgment of the court is conclusive, and an appeal may not be taken from the court's judgment.

(b) If upon appeal the benefits assessed or damages awarded by the works board are reduced or increased, the municipality may, upon the payment of costs, discontinue the proceedings. It may also, through the works board, make and adopt an additional assessment against all the property originally assessed in the proceeding, or that part that is benefitted, in the manner provided for the original assessment. However, such an assessment against any one (1) piece of property may not exceed ten percent (10%) of the original assessment against it.

(c) If the municipality decides to discontinue the proceedings upon payment of costs and if assessments for benefits have already been paid, the amounts paid shall be paid back to the person or persons paying them.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-12

Assessment of benefits; local assessment roll

Sec. 12. (a) Upon completion of the assessment list by the works board, the list shall be delivered to the fiscal officer of the municipality. From the time the respective amounts of benefits are assessed, or if a lot or parcel has sustained both benefits and damages because of an improvement as stated in the assessment list, then the excess of benefits assessed over damages awarded constitutes a lien superior to all other liens except taxes against the respective lot or parcel.

(b) The fiscal officer of the municipality shall immediately prepare a list of the excess of benefits, to be known as the local assessment list. If the municipality is a second class city and the county treasurer collects money due the city, the local assessment list shall be delivered to the county treasurer.

(c) The duties of the fiscal officer of the municipality and county treasurer are the same as prescribed with regard to assessments for street improvement. The provisions of the statute relating to:

- (1) the payment of street improvement assessments by installments on the signing of waivers and issuance of bonds and coupons in anticipation;
- (2) the duties of the fiscal officer and the county treasurer in relation to them; and
- (3) the enforcement of payment of assessments in proceedings for the improvement of streets by the works board;

applies to these assessments.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-13

Due date of benefit assessments; foreclosure of liens; costs

Sec. 13. (a) The benefit assessments are due and payable to the fiscal officer or county treasurer from the time of the preparation or delivery of the assessment duplicate.

(b) If an assessment is not paid within sixty (60) days, the municipality, by its attorney, shall proceed to foreclose the liens as mortgages are foreclosed, with similar rights of redemption, and have the property sold to pay the assessments. The municipality may recover costs, with reasonable attorney's fees, and interest from the expiration of the sixty (60) days allowed for payment, at the rate of six percent (6%) per year.

(c) If the person against whom the assessment is made is a resident of the municipality, demand for payment must be made by delivering to the person personally, or leaving at the person's last or usual place of residence, a notice of the assessment and demand for payment.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-14

Payment of damage awards

Sec. 14. The works board may determine if any part of the damages awarded shall be paid out of funds appropriated for the use of the board. However, not more than two thousand dollars (\$2,000) in damages may be paid out of the municipality's funds for any improvement or condemnation except under an ordinance appropriating money for the specific improvement or condemnation. All benefits assessed and collected by the fiscal officer or county treasurer are subject to draft, in the usual manner, upon certificate by the works board in favor of persons to whom damages have been awarded. Any surplus remaining above actual awards belongs to the municipality. The works board may delay proceedings until the benefits have been collected.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-15

Certificates of damages; disputes as to whom damages should be

paid; injunction

Sec. 15. (a) Upon completion of the award of damages or whenever any time for delay as provided has expired, the works board shall make out certificates for the proper amounts and in favor of the proper persons. Presentation of the certificates to the fiscal officer of the municipality entitles the person to a warrant on the fiscal officer or the county treasurer. The certificates or vouchers shall, whenever practicable, be actually tendered to the persons entitled to them, but when this is impracticable, they shall be kept for the persons in the office of the works board. The making and fixing of the certificate is a valid and effectual tender to the person entitled to it, and the certificate must be delivered to that person on request.

(b) If a dispute or doubt arises as to which person the money shall be paid, the works board shall make out the certificate in favor of the municipality's attorney for the use of the persons entitled to it. The attorney shall draw the money and pay it into court in a proper proceeding, requiring the various claimants to interplead and have their respective rights determined.

(c) If an injunction is obtained because damages have not been paid or tendered, the works board may tender the certificate for the amount with interest from the time of entry upon the property, if any has been made, including all accrued costs. The injunction shall then be dissolved. The pendency of an appeal does not affect the validity of a tender made under this section, but the municipality may proceed with its acquisition of the property in question. However, when a lot or parcel has sustained both benefits and damages because of improvements as stated in the assessment list, only an excess of damages awarded over benefits assessed is payable under this section.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-16

Shoreline improvements; condemnation procedure

Sec. 16. (a) This section applies whenever the works board of a municipality located upon or adjoining a harbor connected with a navigable stream or lake, or upon any navigable channel, slip, waterway, or watercourse, wants to acquire for the use of the municipality any property for a right-of-way for seawalls, docks, or other improvement of the harbor, channel, slip, waterway or watercourse.

(b) The works board shall adopt a resolution that the municipality wants to acquire the property, describing the property that may be injuriously or beneficially affected. All proceedings necessary for the completion of and payment for any such undertaking, including notice, remonstrance, appeal, letting of and performance of contracts, assessment and collection of payment for benefits, and the determination and payment of damages to property, are the same, to the extent applicable, as those proceedings for street improvements of the municipality by its works board or other entity charged by

statute with the performance of those duties on behalf of the municipality.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-17

Attorney's fees

Sec. 17. If applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.

As added by P.L.163-2006, SEC.14.

IC 32-24-3

Chapter 3. Procedures for State Government

IC 32-24-3-1

Commencement of action

Sec. 1. If the governor considers it necessary:

- (1) to acquire property on which to construct public buildings for the state; or
- (2) to acquire property adjoining state property on which buildings have been erected;

the governor may order the attorney general to file an action in the name of the state. The attorney general shall file the action in a court that has jurisdiction in the county in which the property is located. The state's petition must ask that appraisers be appointed to appraise the value of the property considered necessary to be acquired for the public uses of the state.

As added by P.L.2-2002, SEC.9.

IC 32-24-3-2

Notice; appointment of appraisers

Sec. 2. Upon filing the petition, the attorney general shall provide the owners of the property the notice required by law in the commencement of a civil action. It is sufficient to make defendants to the petition all persons who are in possession of the property and those who appear to be the owners or to have any interest in the property by the tax duplicates and the records in the offices of the auditor and recorder of the county. After notice has been given, the court shall appoint:

- (1) one (1) disinterested resident freeholder of the county where the property is located; and

(2) two (2) disinterested appraisers licensed under IC 25-34.1; who are residents of Indiana to appraise the value of the property. One (1) of the licensed appraisers appointed under this subsection must reside not more than fifty (50) miles from the land or building.

As added by P.L.2-2002, SEC.9. Amended by P.L.113-2006, SEC.20.

IC 32-24-3-3

Oath and report of appraisers

Sec. 3. (a) Before entering upon their duties, the appraisers shall take and subscribe an oath that they will honestly appraise the property at its fair cash value.

(b) The appraisers shall make a report of their appraisal within a time fixed by the court.

(c) If the appraisers fail for any cause to make a report within the time fixed by the court, the court may extend the time or may appoint other appraisers.

As added by P.L.2-2002, SEC.9.

IC 32-24-3-4

Exceptions to report of appraiser

Sec. 4. (a) After the appraisers file their report, any of the defendants may, within a reasonable time fixed by the court, file exceptions to the report, alleging that the appraisal of the property, as made by the appraisers, is not the true cash value of the property. If exceptions are filed, a trial on the exceptions shall be held by the court or before a jury, if asked by either party.

(b) The circuit court clerk shall give notice of filing of the appraisers' report to all known parties to the action and their attorneys of record by certified mail.

(c) Upon the trial of the exceptions, the court may revise, correct, amend, or confirm the appraisal in accordance with the finding of the court or verdict of the jury.

(d) The court shall apportion the costs accruing in the proceedings as justice may require. However, if applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.

(e) Changes of venue may be had as in other cases.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.15.

IC 32-24-3-5

Payment of value of real estate

Sec. 5. When the value of the property has been finally determined by the court, the governor may provide for the amount so found and may direct the auditor of state to draw a warrant on the treasurer of state to be paid out of any fund available in favor of the clerk of the circuit court. The clerk shall receive the money and hold it in court for the use of the owners and other persons adjudged to be entitled to the money.

As added by P.L.2-2002, SEC.9.

IC 32-24-3-6

Receipt of payment; execution of deed

Sec. 6. Upon payment to the clerk of the circuit court and the filing of a receipt for the payment of the money in open court as a part of the proceedings of the cause, the court shall direct the clerk of the circuit court to:

- (1) execute a deed conveying the title of the property to the state of Indiana; and
- (2) deliver the deed to the governor.

As added by P.L.2-2002, SEC.9.

IC 32-24-4

Chapter 4. Procedures for Utilities and Other Corporations

IC 32-24-4-1

Public utilities

Sec. 1. (a) A person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts, street railways, or interurban railways for the use of the public or for the use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any interest in the land or real estate to accomplish the essential delivery of services described in subdivisions (1) and (2).

(b) A person described in subsection (a) has all accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. A person acting under subsection (a) may use acquired, condemned, or appropriated land to construct railroad siding, switch, or industrial tracks connecting its plant or facilities with the tracks of any common carrier.

As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.16.

IC 32-24-4-2

Fee simple or easements

Sec. 2. The condemnor may take, acquire, condemn, and appropriate a fee simple estate, title, and interest in an amount of land as the condemnor considers necessary for the condemnor's proper uses and purposes. However, for rights-of-way, the condemnor shall take, acquire, condemn, and appropriate an easement.

As added by P.L.2-2002, SEC.9.

IC 32-24-4-3

Authority to exercise eminent domain

Sec. 3. The appropriation and condemnation of land and easements in land authorized under this chapter shall be made under IC 32-24-1, except as otherwise provided in this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-4-4

Application; payments; election of method; sale of interest in servient estate; statement in offer; acceptance of offer

Sec. 4. (a) This section applies to a public utility that appropriates by condemnation procedures an easement for right-of-way purposes on land zoned or used for agricultural purposes.

(b) If a public utility makes a uniform easement acquisition offer

under IC 32-24-1-5 or a settlement offer under IC 32-24-1-12 in excess of five thousand dollars (\$5,000), the owner of the land may elect to accept as compensation either a lump sum payment or annual payments for a period not to exceed twenty (20) years.

(c) The landowner must elect either the lump sum payment or the annual payment method at the time the landowner:

- (1) accepts the public utility's offer under IC 32-24-1-5 or IC 32-24-1-12 to purchase an easement;
- (2) accepts the appraisers' award; or
- (3) is awarded damages by a judgment in a proceeding under this article.

The grant of easement or judgment, whichever is applicable, must state the method of payment the landowner has elected to receive.

(d) If the land is owned by more than one (1) person, the election to receive annual payments must be unanimous among all record owners to be binding upon the public utility.

(e) Selection of the lump sum method of payment irrevocably binds the landowner and the landowner's successors in interest.

(f) The annual amount payable must be equal to the lump sum payment that would have otherwise been made by the utility divided by the number of years the landowner elects to receive the annual payments plus interest at a rate agreed upon by the public utility and the landowner on the balance remaining at the end of each year. The public utility shall make the annual payment as close as practicable to the date of the landowner's acceptance of the public utility's offer or the date of the judgment granting the utility the easement. If the public utility and the landowner are unable to agree upon the interest rate, the interest rate shall be the average annual effective interest rate for all new Federal Land Bank Loans, computed on the basis of the twelve (12) month period immediately preceding the date of settlement.

(g) A landowner who withdraws the appraisers' award under IC 32-24-1-11 may receive only a lump sum payment from the clerk at that time. If the landowner is later awarded a judgment for damages that exceeds the amount of the appraisers' award, the landowner may elect either method of compensation only to the extent that the damages exceed the appraisers' award remaining to be paid by the public utility as a result of the judgment.

(h) A landowner who elects the annual payment method may terminate the election by giving notarized written notice to the public utility at least ninety (90) days before the annual date of payment. The public utility may prescribe reasonable forms for the notice and may require that these forms be used for the notice to be effective. In the event the landowner terminates this election, the public utility shall pay the landowner in a single payment the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(i) If a landowner sells the landowner's entire interest in the

servient estate, the landowner shall give the public utility prompt notarized written notice of the sale, together with a copy of the deed specifying the name and address of the landowner's successor in interest. If the public utility receives the notice less than ninety (90) days before the date of an annual payment, the public utility may make this annual payment to the landowner but must make all successive payments to the landowner's successors and assigns.

(j) If a landowner sells less than the landowner's entire interest in the servient estate, the public utility may continue to make the annual payments to the landowner.

(k) A public utility shall make annual payments to the landowner only for the time the servient estate continues to be zoned or used for agricultural purposes. If the servient estate is no longer zoned or used for agricultural purposes, the public utility shall pay to the landowner the difference between the lump sum and the total of all annual payments previously paid by the public utility. Upon the landowner's receipt of this payment, the public utility's payment obligations cease.

(l) This section is binding upon the heirs, successors, and assigns of the landowner and the public utility.

(m) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must include the following statement in at least ten (10) point boldface type capital letters:

"IF THIS OFFER IS OVER FIVE THOUSAND DOLLARS (\$5,000), YOU MAY ELECT UNDER IC 32-24-4-4 TO ACCEPT PAYMENT IN A LUMP SUM PAYMENT OR IN ANNUAL PAYMENTS FOR A PERIOD NOT TO EXCEED TWENTY (20) YEARS WITH INTEREST. IF YOU ELECT ANNUAL PAYMENTS, THEN POSSESSION WILL BE REQUIRED THIRTY (30) DAYS AFTER YOU HAVE RECEIVED YOUR FIRST ANNUAL PAYMENT."

(n) Every offer of a public utility under IC 32-24-1-5 and IC 32-24-1-12 must also include a form to be used by the landowner to accept the offer that substantially contains the following:

ACCEPTANCE OF OFFER

I (We), _____, _____, _____,
landowner(s) of the above described property or interest in property
hereby accept the offer of \$ _____ made by _____
(condemnor) on this ____ day of _____, 20 ____ . Please check
one of the following if the offer is in excess of five thousand dollars
(\$5,000):

() I (We) elect to accept payment in a lump sum.

() I (We) elect to accept payment in annual payments for a period
of ____ years with interest as determined under IC 32-24-4-4.

NOTARY'S CERTIFICATE

STATE OF _____)

IC 32-24-4.5

Chapter 4.5. Procedures for Transferring Ownership or Control of Real Property Between Private Persons

IC 32-24-4.5-1

Application of chapter; "public use"

Sec. 1. (a) As used in this section, "public use" means the:

- (1) possession, occupation, and enjoyment of a parcel of real property by the general public or a public agency for the purpose of providing the general public with fundamental services, including the construction, maintenance, and reconstruction of highways, bridges, airports, ports, certified technology parks, intermodal facilities, and parks;
- (2) leasing of a highway, bridge, airport, port, certified technology park, intermodal facility, or park by a public agency that retains ownership of the parcel by written lease with right of forfeiture; or
- (3) use of a parcel of real property to create or operate a public utility, an energy utility (as defined in IC 8-1-2.5-2), or a pipeline company.

The term does not include the public benefit of economic development, including an increase in a tax base, tax revenues, employment, or general economic health.

(b) This chapter applies to a condemnor that exercises the power of eminent domain to acquire a parcel of real property:

- (1) from a private person;
- (2) with the intent of ultimately transferring ownership or control to another private person; and
- (3) for a use that is not a public use.

(c) This chapter does not apply thirty (30) years after the acquisition of the real property.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-2

"Condemnor"

Sec. 2. As used in this chapter, "condemnor" means a person authorized to exercise the power of eminent domain.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-3

"Parcel of real property"

Sec. 3. As used in this chapter, "parcel of real property" means real property that:

- (1) is under common ownership; and
- (2) a condemnor is seeking to acquire.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-4

"Private person"

Sec. 4. As used in this chapter, "private person" means a person other than a public agency.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-5**"Public agency"**

Sec. 5. (a) As used in this chapter, "public agency" means:

- (1) a state agency (as defined in IC 4-13-1-1);
- (2) a unit (as defined in IC 36-1-2-23);
- (3) a body corporate and politic created by state statute;
- (4) a school corporation (as defined in IC 20-26-2-4); or
- (5) another governmental unit or district with eminent domain powers.

(b) The term does not include a state educational institution.

As added by P.L.163-2006, SEC.17. Amended by P.L.2-2007, SEC.365.

IC 32-24-4.5-6**"Relocation costs"**

Sec. 6. As used in this chapter, "relocation costs" means relocation expenses payable in accordance with the federal Uniform Relocation Assistance Act (42 U.S.C. 4601 through 42 U.S.C. 4655).

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-7**Acquisition of property; conditions**

Sec. 7. A condemnor may acquire a parcel of real property by the exercise of eminent domain under this chapter only if all the following conditions are met:

(1) At least one (1) of the following conditions exists on the parcel of real property:

(A) The parcel contains a structure that, because of:

- (i) physical condition;
- (ii) use; or
- (iii) occupancy;

constitutes a public nuisance.

(B) The parcel contains a structure that is unfit for human habitation or use because the structure:

- (i) is dilapidated;
- (ii) is unsanitary;
- (iii) is unsafe;
- (iv) is vermin infested; or
- (v) does not contain the facilities or equipment required by applicable building codes or housing codes.

(C) The parcel contains a structure that is:

- (i) a fire hazard; or
- (ii) otherwise dangerous to the safety of persons or property.

(D) The parcel contains a structure that is not fit for its intended use because:

- (i) the utilities;
- (ii) the sewerage;
- (iii) the plumbing;
- (iv) the heating; or
- (v) any other similar services or facilities;

have been disconnected, destroyed, removed, or rendered ineffective.

(E) The parcel:

- (i) is located in a substantially developed neighborhood;
- (ii) is vacant or unimproved; and
- (iii) because of neglect or lack of maintenance, has become a place for the accumulation of trash, garbage, or other debris or become infested by rodents or other vermin, and the neglect or lack of maintenance has not been corrected by the owner of the parcel within a reasonable time after the owner receives notice of the accumulation or infestation.

(F) The parcel and any improvements on the parcel are the subject of tax delinquencies that exceed the assessed value of the parcel and its improvements.

(G) The parcel poses a threat to public health or safety because the parcel contains environmental contamination.

(H) The parcel has been abandoned.

(2) The acquisition of the parcel of real property through the exercise of eminent domain is expected to accomplish more than only increasing the property tax base of a government entity.

(3) If the owner files a request for mediation at the time the owner files an objection or exception to an eminent domain proceeding, the mediation occurs as follows:

(A) The court shall appoint a mediator not later than ten (10) days after the request for mediation is filed.

(B) The condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain.

(C) The mediation must be concluded not later than ninety (90) days after the appointment of the mediator.

(D) The condemnor shall pay the costs of the mediator.

A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property. If a court determines that an eminent domain proceeding brought under this chapter is unauthorized because the condemnor did not meet the conditions described in this section, the court shall order the condemnor to reimburse the owner for the owner's reasonable attorney's fees that the court finds were necessary to defend the action.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-8

Compensation for owners of acquired property

Sec. 8. Notwithstanding IC 32-24-1, a condemnor that acquires a parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

- (1) For agricultural land:
 - (A) either:
 - (i) payment to the owner equal to one hundred twenty-five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1; or
 - (ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain;
 - (B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and
 - (C) payment of the owner's relocation costs, if any.
- (2) For a parcel of real property occupied by the owner as a residence:
 - (A) payment to the owner equal to one hundred fifty percent (150%) of the fair market value of the parcel as determined under IC 32-24-1;
 - (B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and
 - (C) payment of the owner's relocation costs, if any.
- (3) For a parcel of real property not described in subdivision (1) or (2):
 - (A) payment to the owner equal to one hundred percent (100%) of the fair market value of the parcel as determined under IC 32-24-1;
 - (B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and
 - (C) payment of the owner's relocation costs, if any.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-9

Offer of settlement

Sec. 9. (a) Not later than forty-five (45) days before a trial involving the issue of compensation, the condemnor shall, and an owner may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date the offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is

willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 10 of this chapter.

(d) This section does not limit or restrict the right of an owner to payment of any amounts authorized by law in addition to damages for the property taken from the owner.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-10

Costs of proceedings

Sec. 10. (a) Except as provided in subsection (b), the condemnor shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the owner by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the condemnor under section 9 of this chapter, the court shall require the condemnor to pay the owner's litigation expenses, including reasonable attorney's fees, in an amount that does not exceed twenty-five percent (25%) of the cost of the acquisition.

As added by P.L.163-2006, SEC.17.

IC 32-24-4.5-11

Acquisition of property in certain project areas

Sec. 11. (a) This section applies to a parcel of real property located in a project area:

- (1) that is located in only one (1) county;
- (2) that is at least ten (10) acres in size; and
- (3) in which a condemnor or its agents has acquired clear title to at least ninety percent (90%) of the parcels in the project area.

(b) As used in this section, "project area" means an area designated by a condemnor and the legislative body for the condemnor for economic development.

(c) Notwithstanding sections 7 and 8 of this chapter, a condemnor may acquire a parcel of real property by the exercise of eminent domain under this section only if all of the following conditions are met:

- (1) The parcel of real property is not occupied by the owner of the parcel as a residence.
- (2) The legislative body for the condemnor adopts a resolution by a two-thirds (2/3) vote that authorizes the condemnor to exercise eminent domain over a particular parcel of real

property.

(d) A condemnor that acquires a parcel of real property through the exercise of eminent domain under this section shall compensate the owner of the parcel as follows:

(1) Payment to the owner equal to one hundred twenty five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1.

(2) Payment of any other damages as determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain.

(3) Payment of the owner's relocation costs, if any.

(e) The condemnor may not acquire a parcel of real property through the exercise of eminent domain under this section if the owner of the parcel demonstrates by clear and convincing evidence that:

(1) the location of the parcel is essential to the viability of the owner's commercial activity; and

(2) the payment of damages and relocation costs cannot adequately compensate the owner of the parcel.

(f) The court shall award the payment of reasonable attorney's fees to the owner of a parcel in accordance with this chapter.

As added by P.L.163-2006, SEC.17.

IC 32-24-5

Chapter 5. Eminent Domain for Gas Storage

IC 32-24-5-1

Subsurface strata or formations

Sec. 1. Whereas, the storage of gas in subsurface strata or formations of the earth in Indiana tends to insure a more adequate supply of gas to domestic, commercial, and industrial consumers of gas in this state and materially promotes the economy of the state, the storage of gas is declared to be in public interest and for the welfare of Indiana and the people of Indiana and to be a public use.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-2

Persons entitled to exercise eminent domain; conditions precedent

Sec. 2. (a) A person, firm, limited liability company, municipal corporation, or other corporation authorized to do business in Indiana and engaged in the business of transporting or distributing gas by means of pipelines into, within, or through Indiana for ultimate public use may condemn:

- (1) land subsurface strata or formations;
- (2) other necessary land rights;
- (3) land improvements and fixtures, in or on land, except buildings of any nature; and
- (4) the use and occupation of land subsurface strata or formations;

for constructing, maintaining, drilling, utilizing, and operating an underground gas storage reservoir.

(b) The following rights in land may be condemned for use in connection with the underground storage of gas:

- (1) To drill and operate wells in and on land.
- (2) To install and operate pipelines.
- (3) To install and operate equipment, machinery, fixtures, and communication facilities.
- (4) To create ingress and egress to explore and examine subsurface strata or underground formations.
- (5) To create ingress and egress to construct, alter, repair, maintain, and operate an underground storage reservoir.
- (6) To exclusively use any subsurface strata condemned.
- (7) To remove and reinstall pipe and other equipment used in connection with rights condemned under subdivisions (1) through (6).

(c) Acquisition of subsurface rights in land for gas storage purposes by condemnation under this section must be without prejudice to any subsequent proceedings that may be necessary under this section to acquire additional subsurface rights in the same land for use in connection with the underground storage. Surface rights in land necessary for the accomplishment of the purposes set forth in

this section may be condemned.

(d) Except with respect to a proceeding under this chapter to:

- (1) acquire the right to explore and examine a subsurface stratum or formation in land; and
- (2) create the right of ingress and egress for operations connected to the acquisition;

and subject to subsection (e), as a condition precedent to the exercise of the right to condemn any underground stratum, formation, or interest reasonably expected to be used or useful for underground gas storage, a condemnor first must have acquired by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in at least sixty per cent (60%) of the stratum or formation. This must be computed in relation to the total surface acreage overlying the entire stratum or formation considered useful for the purpose.

(e) A tract under which the stratum or formation sought to be condemned is owned by two (2) or more persons, firms, limited liability companies, or corporations must be credited to the condemnor as acquired by it for the purpose of computing the percentage of acreage acquired by the condemnor in complying with the requirement of subsection (d) if the condemnor acquires from the owner or owners of an undivided three-fourths (3/4) part or interest or more of the underground stratum or formation, by purchase, option, lease, or other method not involving condemnation, the right, or right upon the exercise of an option, if any, to store gas in the stratum or formation. It is not necessary for the condemnor to have acquired any interest in the property in which the condemnee has an interest before instituting a proceeding under this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-3

Oil and gas leases; drilling into gas storage stratum

Sec. 3. (a) The rights acquired by condemnation must be without prejudice to the rights and interests of the owners or their lessees to:

- (1) execute oil and gas leases;
- (2) drill or bore to any other strata or formation not condemned;
- and
- (3) produce oil and gas discovered.

However, any drilling and all operations in connection with the drilling must be performed in a manner that protects the strata or formations condemned against the loss of gas and against contamination of the reservoir by water, oil, or other substance that will affect the use of the condemned strata or formations for gas storage purposes.

(b) If the owners of mineral rights or the owners' lessees drill into land in which gas storage rights have been condemned under this chapter, the owners of mineral rights or their lessees shall give notice to the owner of the gas storage stratum, formation, or horizon at least thirty (30) days before commencing the drilling. The notice must

specify the location and nature of the operations, including the depth to be drilled. The notice must be given by United States registered or certified mail, return receipt requested, and addressed to the usual business address of the owner or owners of the gas storage stratum or formation condemned under this chapter.

(c) It is the duty of the owner of a gas storage stratum or formation to designate all necessary procedures for protecting the gas storage area. The actual costs incurred over and above customary and usual drilling and other costs that would have been incurred without compliance with the requirements shall be borne by the owner of the gas storage stratum or formation. An owner or lessee of mineral interests other than gas storage rights is not responsible for an act done under such a requirement or the consequences of this act.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-4

Rights appropriated and condemned; compensation paid

Sec. 4. Only the rights in land necessary for use in connection with underground storage of gas and those subsurface strata adaptable for underground storage of gas may be appropriated and condemned under this chapter. Rights in the subsurface of land constituting a part of a geological structure are deemed necessary to the operation of an underground storage reservoir in the structure. In determining the compensation to be paid to the owner of an oil producing stratum, or interest in the stratum, condemned under this chapter, proof may be offered and consideration must be given to potential recovery, if any, of oil from a stratum by secondary or other subsequent recovery processes in addition to potential recovery by a primary process.

As added by P.L.2-2002, SEC.9.

IC 32-24-5-5

Authority to appropriate and condemn

Sec. 5. The appropriation and condemnation of subsurface strata or formations in land rights in and easements in land and subsurface strata or formations authorized by this chapter must be made under IC 32-24-1.

As added by P.L.2-2002, SEC.9.

IC 32-24-6

Chapter 6. Exceptions to Eminent Domain Assessments

IC 32-24-6-1

Law governing procedure

Sec. 1. (a) A party may file a written objection in a proceeding for the condemnation or appropriation of property for public use brought by:

- (1) the state of Indiana;
- (2) a commission, a department, or an agency of the state;
- (3) a county;
- (4) a township;
- (5) a city;
- (6) a town; or
- (7) a taxing district;

under a law of the state authorizing the assessment of damages or benefits, appraisal, compensation, condemnation, or appropriation of property for public use.

(b) A party aggrieved by:

- (1) the assessment of compensation or damages;
- (2) the fixing of the value of the property involved; or
- (3) the fixing of benefits;

as set forth in the report of an appraiser filed in a proceeding described in subsection (a) may file written exceptions in the office of the clerk of the court in which the cause is pending within ten (10) days after the report is filed. After the objections are filed, the cause shall proceed to issue, trial, and judgment as in civil actions in accordance with the provisions of the law not in conflict with this chapter governing the procedure in eminent domain as defined in IC 32-24-1.

As added by P.L.2-2002, SEC.9.

IC 32-24-6-2

Appraisers' report; notice of filing; period of exceptions

Sec. 2. In the exercise of the power of eminent domain, notice of filing of the appraisers' report shall be given by the clerk of the court to all known parties to the action by certified mail. Any period of exceptions after which the parties are barred from disputing the appraisal and condemnation shall run from the date of mailing.

As added by P.L.2-2002, SEC.9.

IC 32-24-7

Chapter 7. Procedure for Libraries

IC 32-24-7-1

Application of chapter

Sec. 1. This chapter applies to the exercise of eminent domain by a library board (as defined in IC 36-12-1-3). Notwithstanding any other law, a library board may exercise eminent domain only if it complies with this chapter.

As added by P.L.163-2006, SEC.18.

IC 32-24-7-2

Adoption of resolution by certain legislative bodies

Sec. 2. A library board may exercise eminent domain only if one (1) of the following legislative bodies adopts a resolution specifically authorizing the library board to exercise eminent domain over a particular parcel of land for a specific purpose:

- (1) If the library district is located entirely within the corporate boundaries of a municipality, the legislative body of the municipality.
- (2) If the library district:
 - (A) is not described by subdivision (1); and
 - (B) is located entirely within the boundaries of a township; the legislative body of the township.
- (3) If the library district is not described by subdivision (1) or (2), the legislative body of each county in which the library district is located.

As added by P.L.163-2006, SEC.18.

IC 32-24-7-3

Contents of resolution

Sec. 3. The resolution described in section 2 of this chapter must specifically describe:

- (1) the parcel of land that the library board seeks to acquire by exercising eminent domain;
- (2) the purpose for which the parcel of land is to be acquired; and
- (3) why the exercise of eminent domain is necessary to accomplish the library board's purpose.

As added by P.L.163-2006, SEC.18.